Conduct and Arrangements for Examinations and Appeals
England and Wales

Licensed Personnel

Crop Inspectors, Seed Samplers and Analysts/Analysts in Charge at Seed Testing Stations

and

Plant Health and Seeds Inspectors (PHSI)

Plant Variety Rights Office
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Introduction

The following procedures are intended to enable NIAB and the Animal and Plant Health Agency (APHA) as the Certifying Authority for England and Wales to take decisions that are not only fair but also demonstrably *fair* and to ensure a person's rights can be exercised.

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Section 1 – ROLE of APHA, NIAB and PHSI

APHA (Varieties and Seeds)

1.1 The APHA Varieties and Seeds Office in Cambridge is the Certifying Authority for England. APHA also acts as Certifying Authority for Wales on behalf of the Welsh Ministers. APHA has overall responsibility for seed certification and enforcement, all official examinations, including the final decision on results, and for arranging the invigilation of all practical and theory examinations.

The Seed Marketing Regulations in England and the Regulations for Wales cover the licensing of Crop Inspectors, Seed Samplers and Seed Testing Stations.

NIAB (INCLUDING THE OFFICIAL SEED TESTING STATION for E and W)

1.2 NIAB is the technical contractor to APHA (Certifying Authority) and organises:

i Official examinations for a crop inspector licence.

ii Official examinations for a seed sampler licence.

iii Training and examinations for seed analysts and analysts in charge (qualified staff are required before a seed testing station can be licensed by APHA).

PLANT HEALTH AND SEEDS INSPECTORATE (PHSI)

1.3 The PHSI work for APHA Varieties and Seeds (Certifying Authority) and undertake official crop inspections, conduct company audits, draw enforcement samples and invigilate at practical examinations. PHSI invigilators must be experienced in certification and seed sampling procedures.

1.4 PHSI are subject to regular assessment by NIAB in both crop inspection and seed sampling techniques.

Glossary

Animal and Plant Health Agency - APHA

Varieties and Seeds - V and S - APHA

National Institute of Agricultural Botany - NIAB

Official Seed Testing Station - OSTS

Plant Health and Seeds Inspectorate - PHSI

Welsh Government - WG

Department of Agriculture, Environment and Rural Affairs (Northern Ireland) - DAERA

Licensed Seed Testing Station – LSTS

Analysts In Charge – AIC

Scottish Government - SG

Science and Advice for Scottish Agriculture - SASA

England and Wales - E and W

Section 2 – Preliminary notes applicable to all sections

Contact with Candidate

2.1 Once an examination has been completed, no contact should be made with a candidate, their employer or manager before the results have been agreed and approved by APHA . If there appears to be good reason for making contact, for example to reduce the risk of an unsuccessful candidate continuing to sample, analyse seed or inspect crops on their own, contact can be made by NIAB but only after the prior agreement of APHA has been obtained.

2.2 NIAB and APHA staff must keep a written record of all contacts they have with a candidate. The notes should be made *at the time of the contact* or as soon as possible thereafter. Notes may have to be produced in the event of an appeal. The notes and any other paperwork connected with a candidate must be retained either in paper or electronic format.

Invigilation

2.3 Qualified staff from NIAB in crop inspection, seed sampling and seed testing will act as examiners. A member of the Varieties and Seeds Team (APHA) will invigilate at theory examinations and a Plant Health and Seeds Inspector (PHSI) will invigilate all practical, field and plot examinations and seed sampling. Invigilators are required to produce a report covering the conduct of the examination noting any special conditions that may have influenced the examination, for example, for outside field examinations, climatic conditions.

Appeals

2.4 A candidate has a statutory right to appeal against a decision not to grant them a licence, to vary, suspend or revoke their licence. A candidate who is being re-examined because their competence has been called into question may be at risk of losing their livelihood if they are unsuccessful. The statutory appeal procedure is set out in paragraph 28 of the Seed Marketing Regulations 2011.

There is no right of appeal to the Plant Varieties and Seeds Tribunal for refusal to grant a licence, vary, suspend or revoke a licence where the sole reason for that refusal is that the candidate has failed to pass the relevant examination.

Any person who remains unhappy with the Secretary of State's decision can seek a judicial review.

Section 3 - Licensed crop inspectors

NEW AND EXISTING CANDIDATES

AIM

An individual can apply for a licence authorising them to inspect crops to produce seed of the species and categories listed in the Seed Marketing Regulations.

3.1 The procedure applies in the case of new candidates who have to take a Part I and Part II or single qualifying examination and candidates, holding a current licence, who have been called for mandatory re-test.

TRAINING

3.2 A candidate must have successfully completed an appropriate training course relating to the inspection of seed crops and, unless the training course was undertaken at NIAB, must confirm in writing to NIAB that they have done so before attending for the official examination.

OFFICIAL EXAMINATION

3.3 The official examination is designed to test a candidate's expertise in crop inspection techniques for seed crops in order to issue a licence. This would include any future examinations on the official inspection of crops that the Secretary of State may require the inspector to attend in order to continue to hold a licence.

CONTENT AND CONDUCT OF THE EXAMINATION

3.4 A candidate will be examined in the theory and practical skills of crop inspection. The examination syllabus is agreed by the APHA technical manager and is reviewed regularly.

3.5 Invigilation will be undertaken by qualified staff from NIAB, APHA and PHSI **(see section 2.3)** as appropriate

ASSESSMENT OF RESULTS

3.6 A candidate will be assessed by examiners against specific criteria. To ensure uniformity of approach, the assessments will then be discussed in a meeting of examiners including the examination organiser.

3.7 The criteria used and the method of allocating marks must be fair and transparent so that the methods used could be easily explained to those who sit the examination.

NOTIFICATION OF RESULTS

3.8 NIAB will notify APHA of the results and detailed reasons for any candidate who is unsuccessful in the examination:

i. Within 10 working days of the examination (where two examinations are close together i.e. cereal re-tests it is useful when marking the second examination to review it against the first to ensure consistency). In situations where examinations are held over more than one day with different candidates, then the marking of each group of papers will be reviewed by NIAB and compared with each other, to ensure consistency.

ii. No contact should be made with candidates until APHA has had an opportunity to review and approve the results.

3.9 APHA will issue all result notifications (pass and failure letters), including signed licences within 15 working calendar days of the examination.

3.10 The letters will be signed at the appropriate level usually Executive Officer (EO). For candidates who were unsuccessful the letter must include:

i. Detailed reasons for failing the examination.

ii. The procedure for making an appeal:

(a) How (in writing).

(b) To APHA, Seeds Marketing.

(c) The regulations require appeals to be made within 21 days working days from the date of the result letter. However it is recommended that a candidate appeal within 7 calendar days. If the appeal was successful it may be possible to retake the examination again that year.

RESITS

3.11 There may be a possibility for a practical resit to be taken in the same examination year. This will depend however on the growth stage of examination material. If not feasible the requirement to re-sit the practical examination will be in the following year.

PROCEDURE FOR MAKING AN APPEAL

3.12 A candidate has a statutory right to appeal against a decision not to grant them a licence, to vary, suspend or revoke their licence **(see section 2.4).**

3.13 A candidate:

i. who is unsuccessful in an official examination will not be granted a licence or;

ii. whose licence is to be varied, suspended or revoked, will be informed in writing of the decision. A candidate will be informed that he/she has the right to appeal against the decision and will be given 21 working days from the date of the letter informing them of the examination result . The candidate will also be informed of the manner in which an appeal can be made. If no appeal is received by the end of the 21-day period, a letter will be sent confirming that a licence is not to be granted or that their licence will not be varied or remains suspended or revoked.

3.14 APHA will, on receipt, acknowledge any appeals.

3.15 Before considering the appeal, APHA will consult as necessary with NIAB and the PHSI invigilator and take into account any representations made by the candidate or by any representative acting on behalf of the candidate.

3.16 APHA may seek further information from the candidate.

3.17 APHA will inform the candidate by letter of the result of their appeal detailing any substantive matters arising from the consultation. The letter will be copied to the NIAB team who organised the examination.

DEFERMENT – MANDATORY RE-TEST

3.18 Candidates who are unable to attend for the mandatory 5 year re-examination may, after careful consideration and with the advice of NIAB, be granted a one year deferment by APHA. **A deferment will only be granted in very exceptional circumstances .** APHA will write to the candidate informing them and will include the approximate date of the next examination. Deferred candidates will be informed by NIAB of the examination dates when the schedule has been agreed. If approved, a candidate will only be allowed to defer attendance at the mandatory 5 year re-examination *once* in each 5 year period.

Section 4 - Licensed seed samplers

AIM

4.1 An individual can apply for a licence authorising them to take samples of seed of the species listed in the Seed Marketing Regulations.

TRAINING

4.2 A candidate must have completed a training course on seed sampling organised on behalf of the Secretary of State, the Scottish Government, the Welsh Ministers or the Department of Agriculture, Environment and Rural Affairs, Northern Ireland before attending the official examination. The syllabus of the training course for England and Wales will be prepared by OSTS and approved by APHA.

OFFICIAL EXAMINATION

4.3 The official examination will test the candidate's fitness to be granted a seed sampler licence; they will be examined in the theory and practical skills of seed sampling. Samplers seeking to work in England and Wales must demonstrate their ability to undertake all aspects of seed sampling. The examination paper will be reviewed and agreed by APHA for each examination.

CONDUCT OF THE EXAMINATION

4.4 Suitably qualified members of OSTS staff will act as instructors and examiners.

4.5 Invigilation will be undertaken by the Varieties and Seeds Team APHA for the theory paper and PHSI **(see section 2.3)** for the practical examination.

ASSESSMENT OF RESULTS

4.6 A candidate will be assessed by OSTS examiners against criteria agreed by APHA. To ensure uniformity of approach, the assessments will then be discussed in a meeting of examiners chaired by the Chief Officer of the OSTS.

4.7 The criteria used and the method of allocating marks must be transparent so they can be easily be explained to, and found fair by, those who sit the examination.

NOTIFICATION OF RESULTS

4.8 The OSTS will notify the results and detailed reasons for candidates failing the exam to APHA within 5 working days of the examination.

4.9 APHA will review the results and discuss with OSTS any areas where marks may need to be revised. This must be completed within 2 working days.

4.10 APHA will issue all result notification (pass and fail) letters within 10 working days from the date of the examination. Those who were successful will be granted a licence.

4.11 The letters will be signed at the appropriate level, usually Executive Officer (EO) . For candidates who were unsuccessful the letter must include:

i. Detailed reasons for failing the examination.

ii. The procedure for making appeals :

(a) How (in writing).

(b) To whom (name) APHA, Seed Marketing.

(c) The regulations require appeals to be made within 21 days calendar days from the date of the result letter. However it is recommended that a candidate appeal within 7 calendar days. If the appeal was successful it may be possible to retake the examination again that year.

PROCEDURE FOR MAKING AN APPEAL

4.12 A candidate has a statutory right to appeal against a decision not to grant them a licence or a decision to vary, suspend or revoke their licence **(See section 2.4) .**

4.13 A candidate:

i. Who is unsuccessful in an official examination will not be granted a licence,

ii. Whose licence is to be varied, suspended or revoked (this may only relate to existing samplers required to take the exam again to re-establish their competence and fail),

will be informed in writing of the decision. A candidate will be informed that he/she has the right to make an appeal against the decision and will be given 21 working days from the date of the letter informing them of the examination result to make an appeal (note recommendation at 4:11 (c)). The candidate will also be informed of the manner in which the appeal should be made. If no appeal is received by the end of the 21 day period, a letter will be sent confirming that a licence is not to be granted or that their licence will not be varied or remains suspended or revoked.

4.14 APHA will, on receipt, acknowledge any appeals and copy relevant documents to the Chief Officer at OSTS. Before considering an appeal APHA will consult as necessary within OSTS and the Invigilators and take into account any representations made by the candidate or by any representative acting on behalf of the candidate.

4.15 APHA may seek further information from the candidate.

4.16 APHA will inform the candidate by letter of the result of their appeal detailing any substantive matters arising from the consultation. The letter will be copied to the Chief Officer OSTS.

Section 5 – Licensed seed testing stations, seed analysts and analysts in charge

5.1 A person may apply to APHA for an establishment to be licensed as a laboratory for carrying out statutory seed testing. To be granted a licence a person must have:

- Suitable premises and equipment for carrying out seed testing.
- A person who is a qualified seed analyst.
- A qualified Analyst in Charge. In the case of a one-person operation, the person must also be qualified as the Analyst in Charge (qualified in seed analysis/testing and laboratory management).

TRAINING AND EXAMINATION

Seed Analyst

5.2 A seed analyst must have completed a training course and passed the relevant examination relating to the testing of seed species to be tested, organised on behalf of the Secretary of State, the Scottish Government, Welsh Government or the Department of Agriculture, Environment and Rural Affairs Northern Ireland.

Analyst in Charge

5.3 An Analyst in Charge must be a seed analyst who has completed the training course and passed the examination required of a seed analyst in respect of each species to be tested at the LSTS for which they have responsibility. They must also have passed an examination relating to laboratory management organised on behalf of the Secretary of State, the Scottish Government, Welsh Government or the Department of Agriculture, Environment and Rural Affairs Northern Ireland.

PURPOSE OF THE EXAMINATIONS

5.4 To test a candidate's expertise to work within the official seed certification system as a seed analyst or Analyst in Charge.

CONTENT AND CONDUCT OF THE EXAMINATION

5.5 A candidate will be examined in the theory and practice of seed analysis and /or laboratory management.

5.6 The syllabus for the examination will be agreed between the Chief Officers of Scotland, Northern Ireland and England and Wales on behalf of APHA and the other UK Certifying Authorities.

5.7 Suitably qualified OSTS staff will act as examiners.

ASSESSMENT OF RESULTS

5.8 A candidate will be assessed by examiners against agreed criteria.

5.9 To ensure uniformity of approach, the assessments will then be discussed in a meeting of examiners including the course and examination organiser and the Chief Officer of the OSTS.

5.10 The criteria used and the method of allocating marks must be transparent so that they can be clearly explained to, and found fair by, those who sit the examination.

5.11 If a candidate is unsuccessful in an examination this means a licence to operate a LSTS cannot be issued, or could result in a LSTS licence being put at risk of suspension or revocation because the Analyst or Analyst in charge are no longer qualified. The Chief Officer of the OSTS and APHA must liaise closely over any proposed action. It would not be appropriate for APHA to write about the status of the licence until the candidate/analyst has had the opportunity to appeal and the appeal has been considered.

5.12 A candidate's failure will not necessarily put a station's licence at risk of suspension or revocation - the station may still be adequately staffed or an alternative Analyst in Charge may already be in place or immediately available. If that is the case, there is no need for APHA to write to the Person in Charge (licensee) at the LSTS unless the licence itself needs to be amended.

NOTIFICATION OF RESULTS

5.13 The Chief Officer of the OSTS or LSTS Supervision Manager will notify all candidates of their results.

5.14 If the licence of a Seed Testing Station is put at risk by a candidate's failure, the Chief Officer or OSTS Supervision Manager for LSTS will consult APHA before sending the letter.

5.15 The letter to candidates who have failed must include:

i. The detailed reasons for failing the examination;

ii. The procedures for making an appeal:

(a) How (in writing).

(b) To whom (the Chief Officer OSTS).

(c) The regulations require appeals to be made within 21 working days calendar days from the date of the result letter.

5.16 The Chief Officer will acknowledge an appeal on receipt and copy the papers to Seed Marketing, APHA. The Chief Officer in considering the appeal will consult the examiners and APHA and take into account any representations made by the candidate or by a representative acting on behalf of the candidate. The Chief Officer may seek further information from, or interview, a candidate. Any substantive matters arising from the consultation shall be provided to the candidate, who will be given the opportunity to make further representations. If necessary, the Chief Officer may, in the interests of demonstrating fairness, refer the appeal to one of the other Chief Officers to review.

5.17 The Chief Officer will copy letters notifying candidates of the outcome of appeals to APHA.

5.18 If a candidate's appeal is unsuccessful and this means a licence to operate a LSTS cannot be issued, or will result in a LSTS licence being put at risk of suspension or revocation because the Analyst or Analyst in Charge are no longer qualified the Chief Officer will inform APHA before sending the letter. APHA will need to consider whether to write to the Person in Charge (licensee) of the LSTS. If it is decided to write this should be done at the same time as the Chief Officer writes to the candidate, or as soon as practicable thereafter.

PROCEDURE FOR MAKING AN APPEAL

5.19 The Person in Charge of a LSTS has a statutory right to make an appeal against a decision not to grant them a licence, to vary their existing licence and suspension or revocation of their licence (**see section 2.4)**.

5.20 The Person in Charge at the LSTS will be informed in writing of the decision. They will be informed that they can make an appeal against the decision and be given 21 working days from the date of the letter to make their appeal. If no appeal is received a letter will be sent confirming that a licence is not to be granted or that the licence will not be varied or remains suspended or revoked.

5.21 APHA will, on receipt, acknowledge any such appeal and copy relevant documents to the Chief Officer, OSTS.

5.22 Before considering the grounds for the appeal, APHA will consult as necessary with OSTS and take into account any representations made by the candidate or by any representative acting on behalf of the candidate.

5.23 APHA may seek further information from the candidate.

5.24 APHA will inform the candidate by letter of the result of their appeal detailing any substantive matters arising from the consultation.

Section 6 – Plant Health and Seeds Inspectorate

AIM

6.1 PHSI are required to attend training and pass an appropriate competence examination, which has a higher pass mark than for licensed personnel, run by NIAB on behalf of APHA before they can:

i. Officially inspect crops to produce seed of the species and categories listed in the Seed Marketing Regulations.

ii. Undertake check inspections.

iii. Take official samples of seed listed in the seed marketing regulations for enforcement purposes.

iv. Supervise Licensed Seed Samplers.

v. Monitor imported seed from Third Countries.

A PHSI who is qualified in any of the above areas is required to return for re-assessment on a regular basis.

TRAINING

6.2 It is recommended that each PHSI nominated to attend an examination should have completed appropriate internal training arranged by their Senior Inspector before attending the formal training course and examination at NIAB.

CONTENT AND CONDUCT OF THE EXAMINATION

6.3 PHSI will be examined in:

i. The theory and practical skills of crop inspection.

ii. The theory and practical skills of seed sampling.

The course and examinations will be agreed by APHA Varieties and Seeds and PHSI management

6.4 Suitably qualified NIAB staff will act as examiners **(See section 2.3).**

ASSESSMENT OF RESULTS

6.5 Each candidate will be assessed by examiners against agreed criteria. To ensure uniformity of approach, the assessments will then be discussed in a meeting of examiners which includes the course and examination organisers and the Head of Seeds Group or the Chief Officer OSTS; for crop inspectors and seed samplers respectively.

6.6 The criteria used and the method of allocating marks must be transparent so that they could be clearly explained to, and found fair by, those who sit the examination.

NOTIFICATION OF RESULTS

6.7 NIAB / OSTS will notify a candidate's results as follows:

i. Crop inspection - direct to APHA within 10 working days of the examination who will issue the results to the Senior PHSI responsible for seeds work within 5 working days of the examination.

ii. Seed sampling - direct to APHA within 5 working days of the examination who will issue the results to the Senior PHSI responsible for seeds work within 5 working days of the examination.

6.8 If requested examination papers, assessment papers and marks will be made available to individual PHSI.

APPEALS

6.9 An appeal by a PHSI against the results of the examination or a re-assessment should be made to APHA Varieties and Seeds via their Senior Inspector copied to the Head of Inspectorate within 21 working days of receiving the result.

6.10 APHA Varieties and Seeds will, on receipt, acknowledge any appeal and copy to the NIAB team who organised the examination or the Chief Officer OSTS as appropriate. When considering appeals, APHA will consult as necessary with PHSI and NIAB and take account of any representation made by the inspector. APHA will aim to respond to all appeals within 10 working days of the examination.